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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-124

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. In s. RL 5.02 (7), the exception to the definition of “solicit” is arguably inconsistent with pertinent statutes. There is nothing in subch. III of ch. 440, Stats., to suggest that mailing of requests for contributions by a professional fund-raiser or fund-raising counsel should not trigger registration requirements when the contents of the mailing only identify a charitable organization as the person requesting the contributions and do not include the name of the professional fund-raiser or the fund-raising counsel. Note, also, that the department’s analysis of the provision only refers to professional fund-raisers; the text of the rule also includes fund-raising counsels.

b. The department should review the authority for the provision in s. RL 5.06 (1) that authorizes the department to deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor, subject to certain employment discrimination laws. Section 440.42 (1) (b), Stats., requires the department to register a charitable organization that meets all of the stated requirements. Section 440.475, Stats., specifies when the department may deny or limit a registration. Arguably, neither of these provisions authorizes the proposed authority to deny or limit registration based on a felony or a misdemeanor conviction.

2. Form, Style and Placement in Administrative Code

a. In the department’s analysis, s. 440.42 (8), Stats., should be listed as a statute authorizing promulgation of the rule. The list of statutes being interpreted appears excessive and lacking in specificity (i.e., pertinent subunits of a listed statute should be referenced).

b. In the treatment clause of SEC. 2, “, as renumbered,” should follow “RL 5.02 (2) (a).” The department should consider merely cross-referencing the statutory definition of “charitable organization,” rather than repeating it in the rule.

c. In s. RL 5.02 (7), “given” should follow “meaning” in the first sentence.

d. The amendment of s. RL 5.06 (2) (title) should be shown by strike-throughs and underscores. [See s. 1.05 (3) (b), Manual.]

e. Section RL 5.08 (3m) can be revised to read: “The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.”

4. Adequacy of References to Related Statutes, Rules and Forms

In s. RL 5.02 (7), the statutory reference should be to s. 440.41 (8), Stats.